

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5517 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

MADHABHAI NAGARBHAI PATEL

Versus

RANCHODBhai BHAICHANDBHAI PANCHAL & ORS.

Appearance:

Shri P.B. Majmudar, Advocate, for the Petitioner

Respondent No. 1 served

Shri T.H. Sompura, Assistant Government Pleader,
for Respondents Nos. 2, 3 and 4

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 15/07/96

ORAL JUDGEMENT

The order passed by the Deputy Collector of

Palanpur (respondent No. 4 herein) on 30th August 1983 in RTS Case No. 26 of 1982 as affirmed in appeal by the District Collector of Banaskantha at Palanpur (respondent No. 3 herein) by his order passed on 18th February 1984 in Appeal No. 5 of 1982 as further affirmed in revision by and on behalf of the State Government (respondent No. 2 herein) by the order passed on 9th July 1984 is under challenge in this petition under art. 227 of the Constitution of India. By his impugned order, respondent No. 4 set aside the sale transaction entered into between the petitioner and respondent No. 1 herein on 1st January 1982 with respect to one parcel of land bearing survey No. 682/2 admeasuring 0 acre 29 gunthas situated at Madana Gadh in taluka Palanpur (the disputed land for convenience).

2. The facts giving rise to this petition move in a narrow compass. The disputed land belonged to respondent No. 1 as a regrant by the State Government as a pasayata land. It was a new tenure land. It could not have been sold without the previous sanction from the concerned Collector of the area. It appears that the petitioner purchased it from respondent no. 1 without obtaining such previous sanction. Thereupon a show-cause notice came to be issued on 14th September 1982 calling upon the petitioner and respondent No. 1 to show-cause why the sale transaction should not be cancelled. The proceeding came to be registered as RTS Case No. 26 of 1982. It appears that the petitioner alone appeared and requested for regularisation of the transaction. Respondent No. 1 however did not appear. Thereafter, by the order passed on 31st August 1983 in the aforesaid proceeding, respondent No. 4 held the sale transaction in question to be invalid and ordered confiscation of the land to the State Government. Its copy is at Annexure A to this petition. The aggrieved petitioner carried the matter in appeal before respondent No. 3 under sec. 203 of the Bombay Land Revenue Code, 1879 (the Code for brief). It came to be registered as Appeal No. 5 of 1982. By the order passed on 18th February 1984 in the aforesaid appeal, respondent No. 3 dismissed it. Its copy is at Annexure B to this petition. The aggrieved petitioner carried the matter in revision before respondent No. 2 under sec. 211 of the Code. By the order passed by and on behalf of respondent No. 2 on 9th July 1984, the petitioner's revisional application came to be rejected. Its copy is at Annexure C to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under art. 227 of the Constitution of India for questioning the correctness of the order at Annexure A to this petition as affirmed in

appeal by the appellate order at Annexure B to this petition as further affirmed in revision by the order at Annexure C to this petition.

3. Learned Assistant Government Pleader Shri Sompura for respondents Nos. 2 to 4 has urged that this petition under art. 227 of the Constitution of India is not maintainable. Thereupon learned Advocate Shri Majmudar for the petitioner has orally prayed that it should be treated as also under art. 226 of the Constitution of India. Such oral prayer is accepted and this petition is treated to be as also under art. 226 of the Constitution of India on payment of the deficit court-fees, if any, within two weeks from today.

4. So far as respondents Nos. 2 and 3 are concerned, the transaction is not regularised on the ground that, by the government resolution passed on 13th July 1983, the system of regularisation of such land was done away with. It is not in dispute that prior thereto was prevalent or in vogue the system of regularisation of such transaction by conversion from new tenure to old tenure on certain terms and conditions.

5. It is a settled principle of law that executive instructions do not have any retrospective operation. Prior to issuance of the Government Resolution of 13th July 1983, the system of regularisation by conversion of such land from new tenure to old tenure was prevalent. It was prevalent on the date of the transaction entered into between the petitioner and respondent No. 1 on 1st January 1982. Its regularisation, if permissible, could not have been refused only on the ground of issuance of the Government Resolution of 13th July 1983.

6. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure A to this petition as affirmed in appeal by the appellate order at Annexure B to this petition as further affirmed in revision by the order at Annexure C to this petition cannot be sustained in law. The matter will have to be remanded to respondent No. 3 for restoration of the proceeding to file and for regularisation of the sale transaction of the land in question by its conversion from new tenure to old tenure on terms and conditions according to the government resolutions or guidelines or instructions prevalent as on 1st January 1982. It is clarified that, under the order by this Court passed on 17th January 1985, the petitioner has deposited with respondent No. 3 Rs. 8000/-. If the amount payable by the petitioner for regularisation of the transaction in

question exceeds Rs. 8000/-, he should be called upon to pay the balance amount. If it is less than the deposited amount, the balance should be refunded to him as expeditiously as possible preferably within one month from the date of the order of regularisation.

7. In the result, this petition is accepted. The order passed by the Deputy Collector at Palanpur on 30th August 1983 at Annexure A to this petition as affirmed in appeal by the order passed by the Collector of Banaskantha at Palanpur (respondent No. 3 herein) on 18th February 1984 in Appeal No. 5 of 1982 at Annexure B to this petition as further affirmed in revision by the order passed by and on behalf of the State Government on 9th July 1984 at Annexure C to this petition is quashed and set aside. The matter is remanded to respondent No. 3 for passing appropriate orders in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.
